



INTERIOR BOARD OF INDIAN APPEALS

Means Construction Co. v. Commissioner of Indian Affairs

5 IBIA 258 (11/23/1976)

Denying reconsideration of:

5 IBIA 242 (11/05/1976)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

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| ADMINISTRATIVE APPEAL OF | : | Order Denying Petition For |
| MEANS CONSTRUCTION CO., <u>ET AL.</u> | : | Reconsideration |
| | : | |
| v. | : | IBIA 77-6-A (Supp.) |
| | : | |
| COMMISSIONER OF INDIAN AFFAIR | : | November 23, 1976 |

On November 19, 1976, the Board received a motion for reconsideration in the above-styled administrative appeal filed by counsel for the Means and Davis Construction Companies. The motion asks that the Board reverse its November 5, 1976, decision in this case which dismissed an appeal from a July 8, 1976, decision of the Commissioner of Indian Affairs for lack of jurisdiction. We denied jurisdiction because we found that the Commissioner's decision was based on an exercise of his discretionary authority.

As grounds for the above motion, appellants maintain that the Commissioner's exercise of discretionary authority must precede rather than follow the actual rendering of any decision. We do not dispute the fairness of such a rule. However, for the reason conveyed in our November 5, 1976, opinion, we think it is clear that the Commissioner utilized his discretionary authority in rendering his July 8, 1976, decision. We stated then, and hereby reaffirm, that this is the "only reasonable construction which is invited by the Commissioner's July 8, decision * * * ." 5 IBIA 242, 245.

At 43 CFR 4.21(c) it is provided that reconsideration of a decision of an Appeals Board may be granted only in extraordinary circumstances where, in the judgment of the Director of the Office of Hearings and Appeals or an Appeals Board, sufficient reason appears therefor. Appellants have not shown any extraordinary circumstances which warrant reconsideration of the Board's prior decision.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR

4.21(c), appellants' Petition for Reconsideration filed November 19, 1976, is hereby DENIED.

Done at Arlington, Virginia.

//original signed
Wm. Philip Horton
Member of the Board

I concur:

//original signed
Alexander H. Wilson
Administrative Judge